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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/729,968

12/09/2003

William R. Sweeney

021238-414

2214

21839 7590 01/13/2010
BUCHANAN, INGERSOLL & ROONEY PC
POST OFFICE BOX 1404
ALEXANDRIA, VA 22313-1404

EXAMINER

ROBINSON BOYCE, AKIBA K

ART UNIT

PAPER NUMBER

3628

NOTIFICATION DATE

DELIVERY MODE

01/13/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No. 10/729,968	Applicant(s) SWEENEY, WILLIAM R.	
	Examiner AKIBA K. ROBINSON BOYCE	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16, 19-25, 27, 30-37, 39 and 42-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16, 19-25, 27, 30-37, 39, and 42-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. Due to communications filed 12/24/09, the following is a non-final office action. Claims 1, 16, 19, 20-25, 27, 30-31, 39, 42-43 have been amended. Claims 15, 17-18, 26, 28-29, 38, 40-41 are cancelled. Claims 1-14, 16, 19-25, 27, 30-37, 39, and 42-46 are pending in this application and have been examined on the merits. Due to the amendment and arguments filed 12/24/09, the previous rejection has been withdrawn, and prosecution has been re-opened.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-14, 16, 19, 20, 31-37, 39, 42, 43, 44, 46 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-14, 16, 19, 20, 31-37, 39, 42, 43, 44, 46 are directed to a series of steps. In order for a series of steps to be considered a proper process under § 101, a claimed process must either: (1) tied to a particular machine or apparatus, or (2) transforms a particular article to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes must positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus the accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different

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state). Claims 1-14, 16, 19, 20, 31-37, 39, 42, 43, 44, 46 identify neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-10, 16, 31-33, 19-20, 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder et al (US 2003/0130883 A1), and further in view of Failing, Jr. et al (US 5448226), as cited by applicant, and further in view of Werner (US 2002/0069107 A1).

As per claims 1, 31, Schroeder discloses:

a manufacturer providing promotion information to be considered in developing the promotion and price computation model/receiving promotion information..., ([0056], shows web interface allowing access to manufacturer databases to provide alternate promotions]);

a retailer providing price determination parameters to develop the promotion and price computation model/receiving price determination parameters..., ([0070], shows

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that a combination of conditions (sales price discount, etc.) can be input by retailer to achieve targets and provide solution); and

developing the promotion and price computation model from the promotion information provided by the manufacturer and the price determination parameters provided by the retailer to implement a promotion/developing the promotion and price computation model from the received promotion information..., ([0006], sales lift model, [0067], shows implementing promotions, w/ [0094], autoregressive models are based on price promotions, and [0069], shows the price offered by the manufacturer in the database depends on the specific retailer, incorporating existing contractual arrangements regarding pricing);

Schroeder does not specifically disclose auditing of improperly implemented promotions, however, does disclose future auditing in [0110]. Here, administrators may modify database contents, enter administrative information to document changes for purposes of future auditing in the business planner system, and also in [0042], discloses support vector regression that allows the user to minimize the risk of the prediction to achieve a specified acceptable level of error.

However, Failing, Jr. et al discloses auditing of proper promotional shelf talkers as shown in col. 3, lines 14-51, and in col. 2, lines 3-11 shows that it is highly likely that some errors or omissions will occur, and even a thorough manual audit may miss some of the shelf talkers due to the quantities of changes involved and the similarity of some products, thereby suggesting that it is common to audit for errors. It therefore would be

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obvious to combine the teachings of Schroeder and Failing, Jr. et al to disclose auditing of improperly implemented promotions. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to audit improperly implemented promotions with the motivation of determining if and when products are taken on/off promotions.

Neither Schroeder et al nor Failing, Jr. et al disclose wherein the promotion information includes a schedule that is encrypted/based on the schedule of the promotion information, wherein the retailer decrypts the schedule received from the manufacturer on a segment-by-segment basis such that only information from a current segment is decrypted. However, Werner discloses a system for scheduling and controlling presentation of data where the system may select promotional material/data to be presented along with features, and then when a feature is encrypted, system may decrypt feature using an associated authorization key, where system is also capable of phasing out or discontinuing the presentation of a feature if the ticket sales indicate that the movie is not selling well as shown in [0044]-[0046]. Werner discloses this limitation in an analogous art for the purpose of showing that phasing out can work in a system where the decryption of encrypted data occurs in order to gradually decipher schedule data.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the promotion information includes a schedule that is encrypted/based on the schedule of the promotion information, wherein the retailer decrypts the schedule received from the manufacturer on a segment-by-

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segment basis such that only information from a current segment is decrypted with the motivation of not decrypting encrypted scheduling data all at once.

As per claims 2, 32, Schroeder discloses:

calculating a retail price based on information provided by the promotion and price computation model developed, ([0006], predicting sales).

As per claims 3, 10, 33, Schroeder discloses:

updating the retail price based upon additional information provided by the retailer/ updating the retail price based upon additional information provided by the retailer/ receiving updated promotion.../updating the retail price..., ([0083], change in price).

As per claim 4, Schroeder discloses:

wherein the additional information comprises additional promotion information provided by the manufacturer, ([0072], additional/extended promotion).

As per claims 5, 33, Schroeder discloses:

wherein the additional information comprises additional price determination parameters provided by the retailer, ([0029], cost of retailer fees).

As per claims 6-8, Schroeder discloses:

wherein the step of updating comprises performing real-time updates of the retail price based upon the additional information, wherein the additional information comprises information received on a real-time basis/wherein the information received on a real-time basis comprises real-time promotion information received from the

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manufacturer/wherein the information received on a real-time basis comprises real-time price determination parameters received from the retailer, ([0075], shows transactions can be handled via real-time authorization).

As per claim 9, Schroeder discloses:

displaying the retail price on a retail display device, ([0106], retailer information displayed).

As per claim 16, Schroeder discloses:

wherein the promotion schedule is stored in a table, ([0077], manufacturer view).

As per claims 44, 46 Schroeder does not specifically disclose the following, however Failing, Jr. et al discloses, that audit reports may be automatic or manual. Remote audits, such as from corporate headquarters, may be conducted through the communications means already in place to provide price change information in col. 3, lines 42-46.

It therefore would be obvious to combine the teaching of Schroeder and Failing, Jr. et al to disclose further comprising the retailer bypassing the promotion and price computation model and manually setting the retail price/further comprising the retailer bypassing tile promotion mid price computation model and manually setting the retail price.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose the above limitation with the motivation of optionally using manual intervention to set retail prices.

As per claims 19-20, 42-43, neither Schroeder et al nor Failing, Jr. et al disclose wherein the decryption on a segment-by-segment basis occurs according to a segment selected from the group consisting of: a time segment, a date segment, and a *promotion type segment*/wherein the decryption occurs by way of decryption keys for each segment that are passed to the retailer on a just-in-time basis. However, Werner discloses a system for scheduling and controlling presentation of data where the system may select promotional material/data to be presented along with features, and then when a feature is encrypted, system may decrypt feature using an associated authorization key, where system is also capable of phasing out or discontinuing the presentation of a feature if the ticket sales indicate that the movie is not selling well as shown in [0044]-[0046]. Also, specifically in [0045], Werner discloses that where feature is encrypted, system may decrypt feature using an associated authorization key, or transfer the authorization key with feature 44 to a data presentation unit for decryption, and that the system may perform such processing before the scheduled presentation or on-the-fly as data is transferred to a data presentation unit. Werner discloses these limitations in an analogous art for the purpose of showing that phasing out can work in a system where the decryption of encrypted data occurs in order to gradually decipher schedule data, and that data can be decrypted during a specific time frame.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the decryption on a segment-by-segment basis occurs according to a segment selected from the group consisting of:
a time segment, a date segment, and a promotion type segment/wherein the

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decryption occurs by way of decryption keys for each segment that are passed to the retailer on a just-in-time basis with the motivation of not decrypting encrypted scheduling data based on promotion all at once, but during a specific frame.

As per claim 45, Schroeder discloses:

wherein the system determines whether a promotion has been improperly implemented on the basis of a contract violation, ([0042], shows support vector regression, a recent development in regression practice, allows the user to minimize the risk of the prediction to achieve a specified acceptable level of error).

6. Claims 21-25, 27, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al (US 5,933,813), as cited by applicant, and further in view of Failing, Jr. et al (US 5448226), as cited by applicant, and further in view of Werner (US 2002/0069107 A1).

As per claim 21, Teicher et al discloses:

A sales controller in communication with a retailer and a manufacturer, (col. 5, lines 34-54, sales controller represented by the POS bar code reader);

a sales device in communication with the retailer and the sales controller, (col. 5, lines 34-54, sales device represented by the POS unit);

wherein the sales controller is configured to receive promotion information from the manufacturer and price determination parameters from the retailer to calculate a retail price and implement a promotion, /and wherein the sales device is configured to receive the retail price from the sales controller (col. 5, lines 34-54, calculates new

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price, [0069], shows the price offered by the manufacturer in the database depends on the specific retailer, incorporating existing contractual arrangements regarding pricing);

Teicher et al does not specifically disclose implementing a promotion or wherein the sales controller is configured to audit improperly implemented promotions and send audit reports to the manufacturer, however does disclose determining and displaying sales promotion prices in col. 1, lines 36-51, which suggests ultimately implementing promotions.

However, Failing, Jr. et al discloses auditing of proper promotional shelf talkers as shown in col. 3, lines 14-51, and in col. 2, lines 3-11 shows that it is highly likely that some errors or omissions will occur, and even a thorough manual audit may miss some of the shelf talkers due to the quantities of changes involved and the similarity of some products, thereby suggesting that it is common to audit for errors. It therefore would be obvious to combine the teachings of Schroeder and Failing, Jr. et al to disclose auditing of improperly implemented promotions. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to audit improperly implemented promotions with the motivation of determining if and when products are taken on/off promotions.

Neither Teicher et al nor Failing, Jr. et al disclose wherein the promotion information includes a promotion schedule that is encrypted at the manufacturer, and the sales controller decrypts the promotion schedule on a segment-by-segment basis such that

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only information from a current segment is decrypted. However, Werner discloses a system for scheduling and controlling presentation of data where the system may select promotional material/data to be presented along with features, and then when a feature is encrypted, system may decrypt feature using an associated authorization key, where system is also capable of phasing out or discontinuing the presentation of a feature if the ticket sales indicate that the movie is not selling well as shown in [0044]-[0046]. Werner discloses this limitation in an analogous art for the purpose of showing that phasing out can work in a system where the decryption of encrypted data occurs in order to gradually decipher schedule data.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the promotion information includes a promotion schedule that is encrypted at the manufacturer, and the sales controller decrypts the promotion schedule on a segment-by-segment basis such that only information from a current segment is decrypted with the motivation of not decrypting encrypted scheduling data all at once.

As per claim 22, Teicher et al discloses:

further comprising a display controller configured to control a plurality of display devices for displaying the retail price, (Col 1, lines 49-51, data processor controls display).

As per claim 23, Teicher et al discloses:

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further comprising at least one display device for displaying the retail price communicated from the display controller, (col. 1, lines 49-51, electronic displays).

As per claim 24, Teicher et al discloses:

further comprising a look-up table generated by the sales controller for indicating the retail price to be displayed by the at least one display device, (col. 4, lines 22-27, list of price reductions).

As per claim 25, Teicher et al discloses:

wherein the sales device comprises a point-of-sale (POS) device that accesses the look-up table to determine the retail price to charge, (Col. 4, lines 22-27, POS unit).

As per claim 27, Teicher et al discloses:

wherein the promotion schedule is stored in a table, (col. 4, lines 22-27, list of price reductions).

As per claim 30, neither Teicher et al nor Failing, Jr. et al disclose wherein the promotion schedule may be decrypted by decryption keys received by the sales controller on a just-in time basis. However, in [0045], Werner discloses that where feature is encrypted, system may decrypt feature using an associated authorization key, or transfer the authorization key with feature 44 to a data presentation unit for decryption, and that the system may perform such processing before the scheduled presentation or on-the-fly as data is transferred to a data presentation unit. Werner discloses this limitation in an analogous art for the purpose of showing that data can be decrypted during a specific time frame.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose wherein the promotion schedule may be decrypted by decryption keys received by the sales controller on a just-in time basis with the motivation of not decrypting encrypted scheduling data based on promotion all at once, but during a specific frame.

7. Claims 11-14, 34-37, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder et al (US 2003/0130883 A1), and further in view of Failing, Jr. et al (US 5448226), as cited by applicant, and further in view of Werner (US 2002/0069107 A1), and further in view of Teicher et al (US 5,933,813), as cited by applicant.

As per claim 11, neither Schroeder et al nor Failing, Jr. et al nor Werner disclose the following, but does disclose updating the retail price through a display in [0106].

However, Teicher et al discloses:

wherein the step of updating is performed automatically in response to either additional promotion information provided by the manufacturer or additional price determination parameters provided by the retailer, (Col. 9, lines 58-69, "updated prices" command received automatically). Teicher et al discloses this limitation in an analogous art for the purpose of initiating a simultaneous, global change in the contents of the display.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to perform updating automatically with the motivation of updating without physical interaction.

As per claim 12, Schroeder et al discloses:
wherein the step of automatically updating is performed on a real-time basis, ([0075], shows transactions can be handled via real-time authorization).

As per claim 13, neither Schroeder et al nor Failing et al nor Werner disclose the following, but does disclose updating the retail price through a display in [0106].

However, Teicher et al discloses:
wherein the automatically updated retail price is passed to a look up table accessible to display devices and point-of-sale devices, (col. 4, lines 6-27, list of price reductions). Teicher et al discloses this limitation in an analogous art for the purpose of showing that price reductions are listed as a source for updating the current price.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to automatically update the retail price according to a look-up table with the motivation of accessing a source to get current prices.

As per claims 14, 34, neither Schroeder et al, Failing et al, nor Werner nor Teicher et al disclose the following, but Schroeder et al does disclose updating the retail price through a display in [0106].

Therefore, the following is obvious with the Schroeder et al/Failing et al/Werner/Teicher et al combination since updates are stored at the computer in Schroeder:

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wherein the automatically updated retail price is passed directly to display devices and point-of-sale devices/ further comprising the step of: providing the updated price to a display controller and a sales controller.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the automatically updated retail price to be passed directly to a display device and point-of-sale devices with the motivation of using stored data to update prices.

As per claim 35, Schroeder et al discloses:

wherein the steps of updating and providing are performed on an as-needed basis, ([0102], as-needed).

As per claim 36, Schroeder et al discloses:

wherein the steps of updating and providing are performed upon request.
([0066], request for the modification of sales plans)

As per claim 37, Schroeder et al discloses:

wherein the steps of updating and providing are performed on a real-time basis, ([0075], real-time).

As per claim 39, Schroeder et al discloses:

wherein the promotion schedule is stored in a table, ([0077], manufacturer view).

Response to Arguments

8. Applicant's arguments with respect to claims 1-46 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 571-272-6734. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7238 [After final communications, labeled "Box AF"], 703-746-7239 [Official Communications], and 703-746-7150 [Informal/Draft Communications, labeled "PROPOSED" or "DRAFT"].

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

A. R. B.
January 12, 2010

/Akiba K Robinson-Boyce/
Primary Examiner, Art Unit 3628